

DOCKET NO.: CWA-08-2003-0074

IN THE MATTER OF:

Westwoods Development Co., LLC.

a Colorado Corporation

Harris Construction Management, LLC.

a Colorado Corporation

Dillon Companies, Inc.

d/b/a King Soopers, Inc.

a Kansas Corporation

Saunders Construction, Inc.

a Colorado Corporation

Respondents.

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolves the matter between the U. S Environmental Protection Agency v. Westwoods Development Co., LLC., Dillon Companies, Inc., d/b/a King Soopers, Inc., and Saunders Construction, Inc., only, and not Harris Construction Management, LLC. Therefore, this Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

February 24, 2004
DATE

SIGNED
Alfred C. Smith
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. CWA-08-2003-0074

In the Matter of:)	
)	
Westwoods Development Company, LLC)	
a Colorado Corporation,)	
)	
Harris Construction Management, LLC)	
a Colorado Corporation,)	CONSENT AGREEMENT
)	
Dillon Companies, Inc.)	
dba King Soopers, Inc.)	
a Kansas Corporation,)	
)	
Saunders Construction, Inc.)	
a Colorado Corporation,)	
)	
Respondents.)	
_____)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondents, Westwoods Development Co., LLC, Dillon Companies, Inc. dba King Soopers, Inc, and Saunders Construction, Inc., by their undersigned representatives, hereby consent and agree as follows:

1. On October 9, 2003, Complainant issued a Second Amended Complaint alleging certain violations of the Clean Water Act (“Act”), § 301 (a), 33 U.S.C. § 1311(a). The Complaint proposed a civil penalty for the alleged violations of the storm water requirements specified in the Colorado Discharge Permit System (“CDPS”) permit no. COR-030000.

2. Respondents admit the jurisdictional allegations of the Complaint but do not admit the specific factual allegations or legal conclusions of the Complaint.

3. Respondents waive their right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.

4. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondents and Respondents' employees, officers, directors, heirs, successors and assigns. Any change in ownership or corporate status of Respondents, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

5. This Consent Agreement does not resolve any claims EPA has against Respondent Harris Construction Management, LLC. EPA will address any claims against Harris Construction Management, LLC in a separate agreement.

6. Respondents consent and agree that not more than thirty (30) calendar days from the date of a signed final order in this matter, Respondents shall pay a civil penalty in the amount of Twenty Nine Thousand Dollars (\$29,000) in the manner described below in this paragraph:

- a. Payment is due within 30 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. The date the payment is made is considered to be the

date of receipt of the payment at the Mellon Bank described below. Payments must be received by 11:00 a.m. EST to be considered as received that day.

- b.. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier.:

U.S. EPA, 360859
Mellon Client Service Center Rm 670
500 Ross Street
Pittsburgh, PA 15262-0001

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

Copies of the check shall be sent to:

Lee Hanley, Environmental Engineer
Technical Enforcement Program (8ENF-W-NT)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

- c. In the event payment is not received by the specified due date, **interest accrues from the date of the final consent order, not the due date**, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 61 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 61st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per year penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 151st day from the date the final consent order is signed). Payments are first applied to accrued interest, penalty and/or handling charge; the balance is then applied to the outstanding principal amount.
- e. Respondents agree that the penalty shall never be claimed as a federal or other tax deduction or credit.
- f. Respondents further agree and consent that if Respondents fail to pay the entire penalty amount within 30 days of the date on the final order, the full penalty amount proposed in the Complaint shall become immediately due and owing by Respondents.

7. The penalty specified in paragraph 6, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

8. Nothing in this Consent Agreement shall relieve Respondents of the duty to comply with the Clean Water Act and its implementing regulations.

9. Failure by Respondents to comply with any of the terms of this Consent

Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

10. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other Federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondents' failure to perform pursuant to the terms of this consent Agreement.

11. Pursuant to 33 U.S.C. § 1319(g)(4), on August 3, 2003, public notice was provided of the filing of the Complaint which is the subject of this Consent Agreement.

12. The undersigned representative of Respondents certify that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.

13. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

14. Each party shall bear its own costs and attorney fees in connection with this matter.

15. This Consent Agreement, upon incorporation into a final consent order by the

Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,**

Complainant.

Date: **2/23/04**

By: **Martin Hestmark for/**
Carol Rushin, Assistant Regional
Administrator, Office of Enforcement
Compliance and Environmental Justice

Date: **2.18.04**

By: **SIGNED**
Elyana Sutin, Senior Enforcement Attorney
Alicia N. Hoegh, Enforcement Attorney

RESPONDENTS

Date:

By: **SIGNED**
Westwoods Development Company, LLC

Date: **2/17/04**

By: **SIGNED**
Dillon Companies, Inc. doing business as
King Soopers, Inc.

Date: **2-10-04**

By: **SIGNED**
Saunders Construction, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **WESTWOODS DEVELOPMENT CO., LLC, DILLON COMPANIES, d/b/a KING SOOPERS, INC., AND SAUNDERS CONSTRUCTION, INC., DOCKET NO.: CWA-08-2003-0074** was filed with the Regional Hearing Clerk on February 23 and 24, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Elyana Sutin and Alicia Hoegh, Enforcement Attorneys, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on February 24, 2004, to:

William B. Hayes
Registered Agent for
Westwoods Development Co., LLC
257 Jackson Street
Denver, CO 80202

Attorney for Harris Construction Management, LLC

Andrew C. Bubb, Esq.
Pelz and Associates, P.C.
1873 S. Bellaire Street, Suite 1401
Denver, CO 80222

Attorney for Dillon Companies, Inc. d/b/a King Soopers, Inc.

Daniel P. Murphy
Montgomery, Little & McGrew, P.C.
5445 DTC Parkway, Suite 800
Greenwood Village, CO 80111

Attorney for: Saunders Construction, Inc.

Paul D. Phillips
Elizabeth A. Mitchell
Holland and Hart LLP
555 17th Street, Suite 3200
Denver, CO 80202-3979

February 24, 2004

SIGNED

Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON FEBRUARY 24, 2004.**